TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 299.

JOHN F. CUBBINS, APPELLANT,

vs.

THE MISSISSIPPI RIVER COMMISSION AND THE YAZOO-MISSISSIPPI DELTA LEVEE BOARD.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

FILED DECEMBER 16, 1913.

(24,467)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 16, 1915.

1 In the District Court of the United States for the Delta Division of the Northern District of Mississippi.

In Equity. No. 1.

JOHN F. CUBBINS et al.
vs.
MISSISSIPPI RIVER COMMISSION AND THE YAZOO-MISSISSIPPI DELTA LEVEE BOARD et al.

Attorneys.

For complainants Barnette E. Moses, Esq., Germania Bank, Memphis, Tennessee.
For Mississippi River Commission: W. S. Hill, Esq., Greenwood, Mississippi.
For Yazoo-Mississippi Delta Levee Board: Gary & Rice, Charleston, Mississippi.

2 In the District Court of the United States for the Delta Division of the Northern District of Mississippi.

In Equity. No. 1.

JOHN F. CUBBINS et al.
vs.
MISSISSIPPI RIVER COMMISSION AND THE YAZOO-MISSISSIPPI DELTA LEVEE BOARD et al.

Transcript of Record on Appeal from the District Court of the United States for the Northern District of Mississippi to the Supreme Court of the United States, Sitting at Washington, D. C.

3 & 4 In the District Court of the United States for the Western Division of the Northern District of Mississippi.

JOHN F. CUBBINS et al.
vs.
MISSISSIPPI RIVER COMMISSION et al.

Now comes the Plaintiff and Appellant in the above styled case, and directs the Clerk to include in the transcript, of the record therein, a full and complete copy of the entire record in said cause.

B. E. MOSES,
Attorney for Plaintiff.

5 In the District Court of the United States for the Northern District of Mississippi.

In Equity.

JOHN F. CUBBINS, a Citizen and Inhabitant of the City of Memphis, Shelby County, and State of Tennessee, and of the Western District of said State, Suing in his own behalf, and for and in behalf of all other Members of the Riparian Land Owners Protective Association, a Voluntary Association of Citizens and Inhabitants of the said County of Shelby, State of Tennessee, and of the Western District of Tennessee, J. W. Bennett being the President of said Association, and P. S. Olcott, V. C. Russell, and N. W. Thompson being respectively the First and Second Vice-Presidents and the Secretary of said Association, the Members thereof being numerous, and each of them being the Owner of, or Interested in Lands Affected as are the Lands of this Complainant, and Interested in the Relief Hereby Sought,

versus

THE MISSISSIPPI RIVER COMMISSION, Constituted and Organized under and by Virtue of an Act of the Congress of the United States of America, a Citizen of the State of Missouri, having its Principal Office in the City of St. Louis, State of Missouri, and in the Eastern District of Missouri; the following Members, Officers, and Agents of the said Mississippi River Commission: Col. C. McD. Townsend, Honorable Robert S. Taylor, Honorable J. A. Ackerson, Honorable Homer P. Ritter, Col. James G. Warren, Honorable Charles H. West, Maj. Clarke S. Smith, a Citizen and Resident of Missouri, but Stationed at the Office of the Mississippi River Commission, at Memphis, Shelby County, Tennessee; Col. William T. Rossell, Maj. Edward M. Markham, Stationed at the Office of the Mississippi River Commission, at Memphis, Shelby County, Tennessee; Maj. James A. Woodruff, Capt. C. O. Sherrill, Stationed at the Office of the Mississippi River Commission, in New Orleans, Louisiana; and all the Officers, Agents, Employees, and Contractors Associated or Confederated with, Employed by, or Aiding and Assisting the said Mississippi River Commission, in any manner whatsoever, in the Construction, Maintenance, or Repair of any Levee or Levees along the Mississippi River, such Officers, Agents, Employes, Contractors
6 and Associates being very numerous and their Names being Unknown to Complainant, Except such as are Specifically Designated and Named as Defendants;

THE ST. JOHN LEVEE AND DRAINAGE DISTRICT OF MISSOURI, a Corporation Organized under and by Virtue of the Laws of the State of Missouri, a Citizen and Inhabitant of the State of Missouri, and of the Eastern District of Missouri, having its Principal Office of Business in the City of New Madrid, in the County of New Madrid, State of Missouri; the Following Officers and Members of the said St. John Levee and Drainage District of Missouri: Lee

C. Phillips, President; Walter S. Edwards, Secretary; William D. Knott, Murray Phillips, and West Dawson, Supervisors;

THE ST. FRANCIS LEVEE DISTRICT OF MISSOURI, a Corporation Organized under and by Virtue of the Laws of the State of Missouri, a Citizen and Inhabitant of the State of Missouri, and of the Eastern District of Missouri, having its Principal Office and Business in the City of Caruthersville, in the County of Pemiscot, State of Missouri; the Following Officers and Members of the said St. Francis Levee District of Missouri: J. A. Cunningham, President; H. C. Shult, Secretary; A. L. Oliver, C. A. Tistadt, Citizens and Inhabitants of the said City of Caruthersville, Missouri; Alphonso De Lisle, J. J. Deliske, J. J. Williams, Citizens and Inhabitants of the City of Portagerille, Missouri, and of said District;

LEVEE DISTRICT NO. 1 OF MISSISSIPPI COUNTY, MISSOURI, a Corporation Organized under and by Virtue of the Laws of the State of Missouri, a Citizen and Inhabitant of the State of Missouri and of the Eastern District of Missouri, having its Principal Office of Business in the City of Charleston, County of Mississippi, State of Missouri; the Following Officers and Members of the said Levee District No. 1 of Mississippi County, Missouri: R. O. Barry, President; D. F. Lee, Vice-President; William Holloway, Secretary, Citizens and Inhabitants of Charleston, Mississippi County, Missouri;

THE COTTON BELT LEVEE DISTRICT NO. 1, a Corporation Organized under and by Virtue of the Laws of the State of Arkansas, a Citizen and Inhabitant of the State of Arkansas, and of the Eastern District of Arkansas, having its Principal Office of Business in the City of Helena, County of Phillips, and the Eastern District of the State of Arkansas; the following Officers and Members of the said Cotton Belt Levee District No. 1: Mr. E. D. Pillow, President; Mr. Greenfield Quarles, Secretary; Mr. John M. Quarles, Engineer; Hon. John I. Moore, Treasurer, all Citizens and Inhabitants of the said City of Helena, County of Phillips, and Eastern District of the State of Arkansas;

7 THE BOARD OF DIRECTORS OF ST. FRANCIS LEVEE DISTRICT, a Corporation Organized under and by Virtue of the Laws of the State of Arkansas, a Citizen and Inhabitant of the State of Arkansas and of the Eastern District of Arkansas, having its Principal Office of Business in the City of Marion, County of Crittendon, in the said Eastern District of Arkansas, and having an Office of Business in the City of Memphis, County of Shelby, in the Western District of the State of Tennessee; the following Officers and Members of the said Board of Directors of St. Francis Levee District: O. N. Killough, President, a Citizen and Resident of Cross County, Arkansas, with an Office in Memphis, Shelby County, Tennessee; H. A. Morrison, Secretary, a Citizen and Resident of Crittendon County, Arkansas, but now to be found in the Office of the said Board, in the City of Memphis, Shelby County, Tennessee; Eugene Williams, Treasurer, a Citizen and Resident of St. Francis County, Arkansas; T. A. Turner, a

Citizen and Resident of St. Francis County, Arkansas; B. G. Covington, a Citizen and Resident of Shelby County, Tennessee; H. D. Tomlinson, J. H. Lovewell, C. M. Bell, C. E. Butler, Citizens and Residents of Mississippi County, Arkansas; T. A. Boford, Eugene Williams, E. A. Rolfe, Citizens and Residents of St. Francis County, Arkansas; H. A. Block, T. B. Smith, Citizens and Residents of Cross County, Arkansas; J. B. Butts, E. C. Homer, John McDonald, Citizens and Residents of Phillips County, Arkansas; H. F. Roleson, J. M. Bush, J. T. Robertson, Citizens and Residents of Lee County, Arkansas; W. B. Armstrong, W. T. Thorne, T. A. Turner, Citizens and Residents of Craighead County, Arkansas; M. W. Hazel, J. C. Hooton, J. C. Mitchell, Citizens and Residents of Poinsett County, Arkansas; J. M. McBee, Louis Machen, Citizens and Residents of Crittendon County, Arkansas;

THE DESHA LEVEE BOARD, a Corporation Organized under and by Virtue of the Laws of the State of Arkansas, a Citizen and Inhabitant of the Eastern District of the State of Arkansas, having its Principal Office of Business in said District, at Arkansas City, in Desha County, Arkansas;

THE CHICOT COUNTY LEVEE BOARD, a Corporation Organized under and by Virtue of the Laws of the State of Arkansas, a Citizen and Inhabitants of Chicot County, in the Eastern District of Arkansas; the following Officers and Members of the said Chicot County Levee Board: J. M. Worthington, President; R. D. Chatord, Treasurer; R. E. Alcorn, Secretary, Citizens and Inhabitants of Chicot County, Arkansas;

LAKE COUNTY LEVEE BOARD, a Corporation Organized under and by Virtue of the Laws of the State of Tennessee, a Citizen and Inhabitant of the Western District of Tennessee, having its Principal Office of Business in the City of Tiptonville, County of Lake, in the Western District of Tennessee; the following Officers and Members of said Lake County Levee Board: A. E. Markham, President; J. C. Jackson; R. C. Fonaldson, Secretary, Citizens and Residents of Lake County, Tennessee;

8 THE YAZOO-MISSISSIPPI DELTA LEVEE BOARD, a Corporation Organized under and by Virtue of the Laws of the State of Mississippi, a Citizen and Inhabitant of the Northern District of the State of Mississippi, having its Principal Office of Business in the City of Clarksdale, Coahoma County, Mississippi; the following Officers and Members of the said Yazoo-Mississippi Delta Levee Board: J. W. Cutrer, President; J. L. Haley, Vice-President, Citizens and Residents of Coahoma County, Mississippi; T. G. Dabney, Chief Engineer, a Citizen and Resident of Shelby County, Tennessee; Guy P. Clark, Secretary and Treasurer, a Citizen and Resident of Coahoma County, Mississippi;

BOARD OF STATE ENGINEERS OF LOUISIANA, a Corporation Organized under and by Virtue of the Laws of the State of Louisiana, a Citizen and Resident of the Eastern District of said State, and

having its Principal Office of Business in the City of New Orleans, Parish of Orleans, in said Eastern District of Louisiana; PONCHARTRAIN LEVEE DISTRICT, a Corporation Organized under and by Virtue of the Laws of the State of Louisiana, a Citizen and Inhabitants of the Eastern District of said State, and having its Principal Office of Business in the City of New Orleans, Parish of Orleans, in said Eastern District of Louisiana; LAKE BORGNE LEVEE DISTRICT, a Corporation Organized under and by Virtue of the Laws of the State of Louisiana, a Citizen and Inhabitant of the Eastern District of said State, and having its Principal Office of Business in the City of New Orleans, Parish of Orleans, in the Eastern District of Louisiana; ORLEANS LEVEE DISTRICT, a Corporation Organized under and by Virtue of the Laws of the State of Louisiana, a Citizen and Inhabitant of the Eastern District of said State, and having its Principal Office of Business in the City of New Orleans, Parish of Orleans, in the Eastern District of Louisiana; GRAND PRAIRIE LEVEE DISTRICT, a Corporation Organized under and by Virtue of the Laws of the State of Louisiana, a Citizen and Inhabitant of the Eastern District of said State, and having its Principal Office of Business in the City of New Orleans, Parish of Orleans, in the Eastern District of Louisiana; PLAQUEMINES PARISH, EAST BANK LEVEE DISTRICT, a Corporation Organized under and by Virtue of the Laws of the State of Louisiana, a Citizen and Inhabitant of the Eastern District of said State, and having its Principal Office of Business in the City of New Orleans, Parish of Orleans, in the Eastern District of Louisiana; all the Officers and Members of the said
9 Mississippi River Commission, and of all the aforesaid State and local Levee Boards or Districts; all Agents, Employees and Contractors Associated, Confederating, or Acting with, Authorized or Employed by, or Aiding and Assisting the said Mississippi River Commission, or the said Levee Boards or Districts, or either or any of them, in the Construction, Maintenance, Enlargement, or Repair of any Levee or Levees along the Mississippi River; such Officers, Members, Agent, Employes, Contractors, and Associates being very numerous, and their Names being unknown to Complainant, except such as are herein Specifically Designated and Named, Defendants.

And thereupon, your orator complains and says:

That he is a citizen and resident of the City of Memphis, County of Shelby and State of Tennessee; That he owns and possesses in fee simple that certain tract of land in the said County of Shelby, State of Tennessee, about one mile no-th of the said City of Memphis, more particularly described as follows, to-wit:

Beginning at the intersection of the north line of Marble avenue with the west line of the Randolph Road; running thence west with the north line of Marble avenue 700 feet, to the Belt Line Railroad; thence north 75 feet; thence in a northeasterly direction eight hundred feet, more or less, to a point in the said West line of the Randolph Road, 200 feet north of the north line of Marble avenue;

thence south with said west line of the Randolph Road, 200 feet to the beginning;

That the value of complainant's said land is more than three thousand dollars;

10 That the alluvial Valley of the Mississippi River extends from Girardeau, Missouri, on both banks, to the Gulf of Mexico, varying in width from four to forty miles, above the mouth of Red River, and to a much greater width below.

It is topographically divided into six large basins, of which four are on the west bank, and two on the east bank, and into many small basins.

The St. Francis Basin extends from Cape Girardeau to Helena, Arkansas. On the west bank at Helena the White River Basis begins and extends to the mouth of the Arkansas River, and there are no highlands on the west bank of the river near the mouth of the Arkansas River; and but for that river, there is no natural physical line of demarcation between the White River Basin and the Tensas Basin.

Below the Arkansas River, and still on the west bank lies the Tensas Basin, extending to the mouth of Red River, and there are no highlands on the west bank of the river near the mouth of the Red River; and but for that stream, there is no natural physical line of demarcation between the Tensas Basin and the Atchafalaya Basin.

From Cairo to a short district below Memphis, Tennessee, on the east bank, the hills crowd closely to the river and form small basins, in one of which the lands of this complainant are situated, the hills forming a barrier to the east of his said lands.

On the east bank, a short distance below Memphis, Tennessee, the Yazoo Basin begins, and extends to Vicksburg, Mississippi.

On the east bank, from Vicksburg to Baton Rouge, Louisiana, the highlands abut on the river at many points, still further

11 dividing this stretch of territory into small basins.

Below the Red River, and on the west bank, the Atchafalaya Basin extends to the Gulf of Mexico, and on the east bank, the Ponchartrain Basin extends from Baton Rouge, Louisiana, to the Gulf.

The small basins on the east bank are shallow, and there is no escape for the flood waters of the river which flow into them, except to return to the Mississippi River at or about the foot of each basin.

That, from time immemorial, the waters of the Mississippi River, during the highest stages thereof, when not contained within the low water banks of the river, found outlet below Cairo into the St. Francis River Basin, and below the highlands near Helena, Arkansas, into the White River, Yazoo, Tensas, Atchafalaya and Pontchartrain Basins, and through rivers draining these basins, eventually into the Gulf of Mexico.

That prior to the construction of levees and the closing of the natural basins by the defendants, as hereinafter stated, these lands of the complainant were free three to ten feet above the highest flood waters of the said Mississippi River, and the said flood waters of the Mississippi River did not overflow his said lands, nor inter-

fere with the use and occupation thereof; but the outlets and drains provided by Nature, through the basins aforementioned, were such as to accommodate said flood waters, and complainant's lands were not injured by said overflows; the flood waters escaping, as aforesaid, through the natural outlets or crevasses, into the basins on the west bank of the River and into the said Yazoo and Pont-
12 chartrain Basins on the east bank, and from the said Basins into the Gulf of Mexico.

That about the year, 1883, the officers and agents of the United States adopted the so-called Eads plan for the improvement of navigation of the Mississippi River, and the defendants, the Mississippi River Commission, acting by, through and in association with numerous and various officers and agents, employes and contractors, whose names are unknown to complainant, has projected, constructed, maintained, enlarged and repaired, and is now engaged in constructing, maintaining, enlarging and repairing, and is aiding and assisting all the other defendants, in constructing, maintaining, enlarging and repairing certain lines of levees on both sides of said River at various places, for various distances, from Cairo, Illinois, to near the head of the Passes, a distance of ten hundred and fifty miles by river from Cairo.

And the defendants, The St. John Levee & Drainage District of Missouri; Levee District No. 1 of Miss. Co. Missouri; the St. Francis Levee District of Missouri; the Cotton Belt Levee District No. 1; the Board of Directors of St. Francis Levee District; the Desha Levee Board; the Chicot County Levee Board; the Lake County Levee Board; the Yazoo-Mississippi Delta Levee Board; the Board of State Engineers of Louisiana; the Pontchartrain Levee District; Lake Borgne Levee District; Orleans Levee District; Grand Prairie Levee District, and the Plaquemines Parish East Bank Levee District, acting by, through and in association with each other, and with various and numerous officers, members, agents, employes, contractors and associates, whose names are unknown to complainant except as hereinbefore stated, before and since 1883 have con-
13 structed, maintained, enlarged and repaired, and are now co-structing, maintaining, enlarging and repairing, and are aiding and assisting in constructing, maintaining, enlarging and repairing certain lines of levees at various places, and of various lengths, along the banks of the said Mississippi River, for the purpose of protecting and reclaiming lands within their respective districts from overflow in *in* times of high water; that the said construction and maintenance and enlargement and repair of said levees by the said defendants has been, since 1883, and is now, under the direct supervision and control of the defendant, the Mississippi River Commission, and in conformity with the grades and method of construction adopted by said Commission.

The lines of levees so constructed, maintained, enlarged and repaired have been joined by said defendants into a continuous line as contemplated by the Eads plan, so that the Mississippi River is now practically leveed on both sides, except on the east, from Port Jefferson, Kentucky, to a point a few miles south of Memphis,

Tennessee, in which distance there is only a short levee constructed, maintained, enlarged and repaired by the defendant, the Lake County Levee Board; and except from the mouth of the Yazoo River to Baton Rouge; where the hills, as aforementioned, hug close to the east bank of the river, and serve as levees.

That the defendant, the Mississippi River Commission, has adopted to its use and assumed permanent control of the levees constructed, maintained, enlarged and repaired by the defendant state and local Levee Boards and Districts, and is adopting and assuming control of them, as they are so constructed, maintained, enlarged and repaired, and is regulating, directing, controlling, assisting and associating with all the defendant state and local Levee Boards
14 and Districts in such construction, maintenance, enlargement and repair of the said lines of levees, with the result that the flood waters of the Mississippi River, to a great extent, are confined within and between said levee lines, and the hills and the eastern banks where there are no levees, and encompassed within a narrower high-water channel than heretofore, and *and* the said waters have acquired an increased velocity and higher elevation of more then six feet, and that such velocity and elevation are being further increased, and the current is becoming, and has become, stronger and more forceful.

That until June, 1910, the grade established for levees by the Mississippi River Commission, and used by the defendants in the construction, maintenance, enlargem-nt and repair of levees, was from two to five feet higher than the highest known water; that since that date, the grade has been changed and increased to three to five feet above the highest known water, and since then the levees have been constructed, maintained, enlarged and repaired in accordance with that grade.

That even such increased grade has proved to be insufficient to retain the flood waters of the Mississippi River for the purpose of the defendants, and that in the year 1912, the said waters flowed over the said lines of levees, and broke through the same in various and numerous places.

That the defendants are now closing gaps and breaks in said lines of levees caused by such confinement of the flood waters, and are building *now* levees, and are repairing the old ones, for the purpose of closing said gaps and breaks, and they are repairing the
15 levee system as a whole, and raising the grade thereof, and they contemplate a further increase in such grade, as aforesaid, and a further enlargement of the said levees, and that for those purposes they have requested and obtained appropriations from the Congress of the United States, and are requesting other and further such appropriations, to aid and assist them in such work.

That the effect of the closing by the defendants of the natural outlets along the said river, and the confining of the flood waters between the levee system as a whole is to obstruct the natural high water flow of the waters of said river in and along its natural bed for its entire length, thereby raising the level of the water to such an extent that said flood waters, within the last five years, have attained

a sufficient height to flow over complainant's land, and when there is now a high water stage in said River, the waters of said river, accumulate, flow over and remain standing upon and over said lands of complainant to a depth of from four to eight feet, so that complainant *in* now being interrupted in the profitable use, occupation and enjoyment of his said land. And, as a result thereof, said water is being held back by the said levees, so constructed, enlarged, maintained and repaired by the defendants, at a higher elevation, as aforesaid, and complainant's said land is being covered with superinduced additions of sand, silt and gravel, now from six inches to three feet in depth; the houses and fences thereon are being washed away, rendering the said land and the said houses thereon unfit for occupency, driving away the tenants, doing irreparable harm and injury to said lands, impairing its usefulness, causing the prac-
16 tical destruction thereof, and destroying its market value.

Complainant is informed and believes, and states it to be a fact that the defendant State and Local Levee Boards or Districts have expended practically all their funds in their efforts to construct, enlarge, maintain and repair the said levees, and that they are now insolvent.

Complainant further states that no proceedings for the condemnation of his said lands has ever been instituted by the defendant, Mississippi River Commission, or by any of the defendant State and Local Levee Boards or Districts, and that no provision has been made in any Act of Congress of the United States, or any of the States, under which the defendant State and Local Levee Boards *of* Districts are organized, or by any of the said defendants to pay for or give him compensation for his said lands now being so damaged, injured, taken and destroyed.

Complainant says that he has no adequate remedy in a court of law against any of the said defendants, and that even if the complainant had the right to sue any or all of the defenda-ts in a c-urt of law, for the recovery of damages for the said injuries complained of, so being done to his said lands, he says that such injury is a continuing one, and *and* will be repeated annually whenever the Mississippi River reaches its high water stage, and that any attempt by complainant to recover damages in a court of law from any or all of the defendants for such continuous and repeated injury to his said lands, would involve complainant in an interminable multiplicity of suits.

17 Complainant realizes and understand fully the great worth and the public utility of the levees and the object for which the same are being projected, as well as the great benefit to the people as a whole, to be derived from the accomplishment and the successful achiev-ment of such purposes; but he says that, under the circumstances set forth, it is not equitable, nor is it just to him, nor to the numerous other persons whose lands are similarly situated, to inflict these tremendous hardships upon them in the prosecution of such works.

And complai-ant avers and states that, by reason of the acts and things aforesaid, done and being done, and contemplated by the

defendants, the complainant is being deprived of his property in said lands without due process of law, and that his said private property is being taken without just compensation to him; all in contravention of the Constitution of the United States of America and of the Articles in addition to and amendment thereof, and of Article V of such Amendments.

The premises considered, complainant prays the Court to grant him process by subpœna directed to The Yazoo-Mississippi Delta Levee Board; J. W. Cutrer, President of the Yazoo-Mississippi Delta Levee Board; Guy P. Clark, Secretary of the Yazoo-Mississippi Delta Levee Board, defendants herein named, commanding them to appear and answer all the allegations of this bill, but not under oath, the same being expressly waived;

That such process may issue as to any of the parties defendant hereto shown to be without the jurisdiction of this Court, if they should come within its jurisdiction, and their oath to their answers being also waived;

18 And Complainant prays the Court to grant him a writ of injunction, enjoining and restraining the said Mississippi River Commission; The St. Francis Levee District of Missouri; Levee District No. 1 of Mississippi County, Missouri; The Cotton Belt Levee District No. 1; The Board of Directors of St. Francis Levee District; The Desha Levee Board; The Lake County Levee Board; The Chicot County Levee Board; The Lake County Levee Board; The Yazoo-Mississippi Delta Levee Board; The Board of State Engineers of Louisiana; Pontchartrain Levee District; Lake Borgne Levee District; The St. John Levee & Drainage District of Missouri; Orleans Levee District; Grand Prairie Levee District; The Plaquemines Parish East Bank Levee District; and all the numerous officers, agents, members, employes, contractors or associates named in the bill, or described as being unknown to the complainant, acting by, through or under the authority of, or in association with the said Mississippi River Commission, or any of the defendant State or Local Levee Boards *of* Districts, who are within the jurisdiction of this Court, or who may come within its jurisdiction, from constructing, maintaining, enlarging or repairing any levee or levees along the said Mississippi River.

And that your complainant have such other and further relief in the premises as the nature *of* the circumstances of this case may require, and to your Honor shall seem meet.

JOHN F. CUBBINS,
Complainant.
BARNETTE E. MOSES,
Solicitor for Complainant.

19 THE UNITED STATES OF AMERICA,
Western District of Tennessee:

On this 28th day of December, 1912 before me personally appeared John F. Cubbins the above named complainant who made solemn oath that he had read the foregoing bill of complaint subscribed by him, and knows the contents thereof and that the same

is true of his own knowledge except as to the matters therein stated on information and belief and as to those matters, he believes it to be true.

[SEAL.] PHIL M. CANALE,
Notary Public.

My Commission expires July 15, 1914.

20 District Court of the United States, Northern District of Mississippi.

JOHN F. CUBBINS
vs.
THE MISS. RIVER COMMISSION et al.

Bond for Costs.

Know all men by these presents, that we, John F. Cubbins, as principal, and The United States Fidelity and Guaranty Company, as sureties, are held and firmly bound unto the Miss. River Commission, Et Al., in the sum of Two Hundred and Fifty Dollars $250.-00), lawful money of the United States of America, but to be void on condition that the said John F. Cubbins shall prosecute with effect, an action in Equity, for injunction, which he is about to commence in the District Court of the United States for the Northern District of Mississippi, at Clarksdale, against the said Mississippi River Commission, Et Al., and in the event the said principal shall not pay all such costs and damages as may at any time be awarded against plaintiff, we the said sureties, bind ourselves, our heirs, representatives and assigns, jointly and severally, by these presents to pay all such costs, and damages as may be awarded against plaintiff.

Witness our hands and seals, this 28th day of December, A. D., 1912.

JOHN F. CUBBINS, [SEAL.]
By B. E. MOSES,
His Solicitor.

Endorsed: # 1. John F. Cubbins, Et Al. vs. The Miss. River Commission, Et Al. and The Yazoo-Miss. Delta Levee Board. Bill of Complaint. Filed Jan. 20, 1913. L. E. Oldham, Clerk. By W. G. Landers, D. C.

21 The President of the United States of America to the Yazoo-Mississippi Delta Levee Board; J. W. Cutrer, President of the Yazoo-Mississippi Delta Levee Board; Guy P. Clark, Secretary of the Yazoo-Mississippi Delta Levee Board, Clarkedale, Mississippi, Greeting:

For certain causes offered before us in our District Court for the Delta Division of the Northern District of Mississippi, sitting in Chancery, we command you, that laying all other matters aside, and notwithstanding any excuse, you personally appear on the first

Monday of March, 1913, at our District Court in and for said District and Division, sitting in — to be held at the Town of Clarksdale, to answer to a Bill of Complaint exhibited against you by John F. Cubbins, et al., Memphis, Tennessee, complainant in our said Court, and further do and receive what our said Court shall consider in this behalf.

Herein fail not, as you will answer to the contrary at your peril.

Witness, the Honorable Henry C. Niles, Judge of the District Court of the United States, and the Seal of our said District Court, at Clarksdale the fourth Monday of July, A. D. 1912, and 137-year of the Independence of the United States.

Issued the 20th day of January, 1913.

[SEAL.] L. E. OLDHAM, *Clerk.*

Memorandum.

The Defendant is required to enter its appearance in the above cause in the Clerk's office of this Court, on or before first Monday of March, 1913, or the bill will be taken pro confesso against it.

L. E. OLDHAM, *Clerk.*

[Endorsed:] No. 1. To March Rules 1913 Term, United States District Court, Northern District of Mississippi, Delta Division. John F. Cubbins, et al. vs. Yazoo-Mississippi Delta Levee Board, et al. Subpœna in Chancery. Filed 2/12/1913. L. E. Oldham, Clerk. By W. G. Landers, D. C. B. E. Moses, Memphis, Tenn., Sol. Received in office Jan. 20, 1913. A. M. Storer, U. S. M. Marshal's costs: Service on 2 Def'ts, $4.00.

I have this day executed the within writ personally, by delivering to the within named J. W. Cutrer, President of the Yazoo-Mississippi Delta Levee Board, defendant, a true copy of the same, at Clarksdale, Miss. This the twenty-fifth day of January, A. D. 1913.

A. M. STORER, *U. S. Marshal.*
By O. M. ROBINS, *Deputy.*

I have this day executed the within writ personally, by delivering to the within named Guy P. Clark, Secretary of the Yazoo-Mississippi Delta Levee Board, defendant, a true copy of the same, at Clarksdale, Miss. This the twenty-fifty day of January, A. D. 1913.

A. M. STORER, *U. S. Marshal.*
By O. M. ROBINS, *Deputy.*

22 In the District Court of the United States for the Northern District of Mississippi. In Equity.

JOHN F. CUBBINS et al.
vs.
MISSISSIPPI RIVER COMMIOAION et al.

Motion to Dismiss.

Comes now the defendant, The Yazoo- & Mississippi Delta Levee Board in this cause by their attorneys and moves the Court that

Complainants' amended bill in the above-styled cause, be dismissed, and in support of said motion says:

I.

The bill shows no ground for relief on its face.

II.

There is no ground for equitable relief contained in or set forth in the bill.

III.

The bill shows on its face no ground for relief either equitable or legal against defendant.

GARY & RICE,
Att'y for Def.

Endorsed: #1. John F. Cubbins, Et Al. vs. The Miss. River Commission, Et Al., and The Yazoo-Miss. Delta Levee Board. Motion to Dismiss. Filed March 3rd, 1913. L. E. Oldham, Clerk. By W. G. Landers, D. C.

23 In the District Court of the United States for the Western Division of the Northern District of Mississippi.

No. —. In Equity.

JOHN F. CUBBINS et al.
vs.
THE MISSISSIPPI RIVER COMMISSION et al.

In this cause, leave of Court having been first obtained, plaintiff hereby amends his original bill herein by striking out from line sixteen (16) of page thirteen (13), thereof the following words: "within the last five (5) years," and by inserting in the place and stead of said words the following: "within the last one (1) year," and by inserting after the words, "Article V," in the last line on page sixteen (1) thereof, the following: "and Article XIV."

Plaintiff further amends his bill by inserting after line eleven (11) of page seventeen (17) thereof, the following: "Plaintiff further prays that in the event that this Honorable Court should find that Plaintiff is not entitled to an injunction as herein prayed, that this case be transferred to the law side of this Honorable Court, and that the same be there proceeded with, and that the Plaintiff herein have and recover of the defendant, Yazoo-Mississippi Delta Board, the sum of Five Hundred Thousand ($500,000) Dollars as damages for the injuries and damages to and the taking of plaintiff's property."

BARNETT E. MOSES,
Attorney for Plaintiff.

We except service of copy of above amendment. 4/2/14.

GARY & RICE,
Atty's for Yazoo-Miss. Delta Levee Board.

Endorsed: District Court of the U. S. John F. Cubbins, Et Al. vs. Miss. River Co., Et Al. Amendment to Original Bill. Filed Apr. 8, 1914. L. E. Oldham, Clerk.

24 United States District Court, Northern District of Mississippi, Delta Division.

No. 1. Equity.

JOHN F. CUBBINS et al.
vs.
YAZOO & MISSISSIPPI DELTA LEVEE BOARD et al.

Opinion on Motion to Dismiss Original and Amended Bill of Complainants.

On January 20, 1913, John F. Cubbins, a citizen of Tennessee, in his own behalf, and on behalf of the members of the Riparian Land Owners Protective Association, a voluntary association of citizens of Shelby County, Tennessee, and interested in the relief sought herein, instituted a suit in Equity against the Mississippi River Commission, a body created under an Act of Congress of the United States, having its principal office in the City of St. Louis, Missouri, and created for the purpose of controlling the floods of the Mississippi river in aid of interstate commerce along its channel; and the Yazoo-Mississippi Delta Levee Board, a Mississippi Corporation, and the various local levee boards, organized under the laws of the several States along the boundaries of which the Mississippi river flows, the said local levee boards co-operating with the said Mississippi River Commission in building and maintaining levees on the banks of the Mississippi river from Cairo, in the State of Illinois to the Gulf of Mexico.

Complainants allege that the result of the building of said levees by defendants has been within the last five — to raise the flood
25 level of said river, and so restrict its channel during the annual flood periods as to annually overflow Complainants' lands to a depth of from five to eight feet, so that Complainants are deprived of the profitable use, occupation and enjoyment of their lands, as by the action of the floods, same are being covered with superinduced additions of sand, silt and gravel, the houses and fences washed away and consequently destroying its usefulness and market value.

Complainants allege that

"Prior to the construction of levees and the closing of the natural basins by the Defendants, these lands of the Complainants were from three to ten feet above the highest flood waters of the said Mississippi river, and the said flood waters of the Mississippi river

did not overflow his said lands, nor interfere with the use and occupation thereof; but the outlets and drains provided by Nature, through the basins aforementioned, were such as to accommodate said flood waters, and Complainants' lands were not injured by said overflows; the flood waters escaping as aforesaid, through the natural outlets or crevasses, into the basins on the west bank of the river and into the said Yazoo and Pontchartrain Basins on the east bank, and from the said Basins into the Gulf of Mexico."

Complainants prayed the Court for a writ of injunction enjoining and restraining the said Defendants in this Court's jurisdiction, from constructing, maintaining, enlarging or repairing any levee of levees along the Mississippi river, and for general relief.

Complainants afterwards filed their amended bill changing the time of the damages by flood to their said lands from "within the last one year," and the following amendment:

"Plaintiff further prays that in the event that this Honorable Court should find that Plaintiff is not entitled to an injunction as herein prayed, that this cause be transferre- to the law side of this Honorable Court, and that the same be there proceeded with, and that the Plaintiff herein have and recover of the Defendant, Yazoo-Mississippi Delta Levee Board, the sum of Five Hundred Thousand ($500,000.00) Dollars as damages for the injuries to, and the taking of Plaintiff's property."

26 The Defendant, the Yazoo-Mississippi Delta Levee Board, the only one of the Defendants served with process, appeared and thereupon filed its motion to dismiss Complainants' original and amended bills, as showing no ground for relief, either legal or equitable, against Defendant. Upon argument the Mississippi River Commission, by its Attorney joined in the motion to dismiss.

Complainant contends for, and rests his case upon the fundamental rule that riparian owners are entitled "to have the stream come to them substantially in its natural state both as to quantity and quality," (quoting from the opinion in the case of United States vs. Chandler-Dunbar Co. 229 U. S. 70) and this fundamental rule or this right of Complaina-ts was "violated by Defendants when they built these levees above the natural banks of the river, increasing the high water elevations from four to ten feet, rendering their lands valueless by overflow, or as Counsel for Complainants expresses it, "the 'taking' of his property is the result of such distrubances if natural conditions." That this was a 'taking' of Complainants property within the established rules of law, and within the Constitutional provision requiring compensation.

Complainants in their bill do not claim that their lands were actually taken; but that the result of the building of the levees by the Defendants was such a one as "rendering the said land and the said houses thereon unfit for occupancy, driving away the tenants, doing irreparable harm and injury to said land, impairing its usefulness, causing the practical destruction thereof and destroying its market value."

These levees were built under Government supervision, assisted

by the various Levee Boards named, each created under the laws of their respective States, united for the great purpose of con-
27 fining the restless "Father of Waters," in its proper channel for the common good.

Congress having power to regulate commerce, exercises it on all the navigable waters of the United States, and the Mississippi River Commission is the agency through which the great work of regulating and improving the navigation of the Mississippi River is carried on.

"All navigable waters are under the control of the United States for the purpose of regulating and improving navigation and although the title to the shore and submerged soil is in the various States and individual owners under them, it is always subject to the servitude in respect of navigation created in favor of the Federal Government by the Constitution."

Gibson vs. United States, 166 U. S. 269.

It is thus seen that the land of a riparian land owner is a freehold, "yet it is charged with a public interest to the people which may not be prejudicial or damnified".

We now come to the question to be decided in the case at bar: Can a riparian land owner claim compensation for injury to his lands, not directly taken or invaded, but suffered, as he admits, as an incident or a consequence, following the erection of levees by Governmental authority, designed to control the waters of the passing stream?

Complainants rest their case herein on the right of a riparian owner to "have the stream come to them substantially in its natural state both as to quality and quantity", a violation of which right constitutes a "taking" of his property within the Constitutional provision for compensation.

This contention may be thus answered:

"There is no dispute about the power of the Government to construct the works which it is claimed, caused the damage to appellants' land. It was alleged by appellant that they were constructed by the 'United States in the execution of its rights and powers in and over said river, and in its pursuance of its lawful control over the naviga-
tion of said river, and for the betterment and improvement
28 thereof'. And also that the works were not constructed upon appellants' land, and their immediate object was to *protect* further erosion at De Soto point. In other words, the object of the works was to preserve the conditions made by natural causes. By constructing works to secure that object, appellants contend there was given to them a right to compensation. The contention asserts a right in a riparian proprietor to the unrestrained operation of natural causes, and that works of the Government which resist or distract those causes, if injury result to riparian owners, have the effect of taking private property for public uses, within the meaning of the 5th Amendment of the Constitution of the United States. The consequences of the contention immediately chal-enges its soundness. The principle contended for seems excessively wrong. Asserting the rights of riparian property, it might make that property valueless. Conceding the power of the Government over navigable waters, it

would make that power impossible of exercise, or would prevent its exercise by the dread of an immeasurable responsibility."

Bedford vs. United States, 192 U. S. 217.

The Supreme Court of Mississippi holds that damage to lands lying between the river and the levee as the result of the construction of levees, is a damage for which, under our laws, no compensation is allowed.

Board of Levee Commissioners vs. Harkleroads, 62 Miss. 807;
Richardson vs. Levee Commissioners, 68 Miss. 539.
Duncan vs. Board, Etc., 74 Miss. 125.

The Supreme Court of our neighbor State of Louisiana supports this doctrine which was fully sustained by the Supreme Court of the United States in the case of

Eldridge vs. Trezevant, 160 U. S. 452.

The case of Cubbins vs. Mississippi River Commission, et al., recently decided by Judge Trieber of the United States District Court, Eastern District of Arkansas, an almost identical case, affords this Court the benefit of a carefully considered opinion in consideration of the question of compensation for damages sustained by a public improvement.

"Th-re is nothing in the National Constitution imposing upon a State the duty of making compensation to the owner of lands for consequential damages sustained by the construction or maintenance of an improvement beneficial to the people at large when there has been no actual taking of any of the property."

Transportation Co. vs. Chicago, 99 U. S. 635.
Osborne vs. Mo. Pac. Ry. Co., 147 U. S. 248.
New York City vs. Pine, 185 U. S. 93.
De Lucca vs. North Little Rock (C. C.), 142 Fed. 597.

29 The latest expression of the Supreme Court of the United States upon this subject is found in the case of Jackson vs. United States, 33 Supreme Court Reporter, 1011.

For the purposes of this decision, we regard this case as controlling as the facts are strikingly identical with those in the case at bar, and the principles of law therein laid down, compelling. Especial attention is called to the concluding paragraph of the Court's opinion, in the Jackson case, as delivered by Mr. Chief Justice White:

"The third consideration, that is, the preventing of the overflow of water by work done in the tributaries, and the consequent increase in the volume of water in the river, cannot be tested from the point of view of individual autho-ity, as the power to do so involves necessarily the increase of governmental power. We therefore come to consider the proposition in that aspect. In doing so, it is to be observed that even if all the previous considerations which we have stated concerning the nonliability to result from building levees, measured by the right of an individual to build a levee to prevent the water of a river from overflowing its banks and destroying his

property, be put out of view, and the case therefore in all its aspects be tested by the scope of the governmental authority possessed by the United States, the absence of merit in all the claims is too clear to require anything but statement. We say this because the plenary power of the United States to legislate for the benefit of navigation, and to construct such works as are appropriate to that end, without liability for remote or consequent-al damages, has been so often decided as to cause the subject not to be open.

It was directly ruled as to work done by the Mississippi River Commission in Beford vs. United States, 192 U. S. 225, upon the authority of which case, as we have said, the Court below placed its ruling, and as the underlying principles which — the subject, were again at this term with much elaboration, stated and applied, we think it unnecessary to do more than refer to that ruling (United States vs. Chandler-Dunbar-Water Power Co. decided May 26, 1913, 229 U. S. 53) and to direct that the judgment below be affirmed."

Complainants insist that the damages to their lands in the case at bar amount to a "taking". The authorities, both State and National, are in full accord that under the state of facts as alleged by Complainants, who admit there was no actual taking or invasion
30 by the action of the Government agencies, its damages sustained are "remote or consequential".

If then, no liability attaches to these Defendants, Complainants have neither relief in equity nor at law, and the motion to dismiss is sustained.

Let a decree in accordance with this opinion enter, taxing the Complainants with all the costs of this cause.

H. C. NILES, *Judge.*

Endorsed: No. 1. Jno. F. Cubbins, et al. vs. The Miss. River Com., et al., & Yazoo-Miss. Delta Levee Board. Opinion of the Court. Filed May 8, 1914. L. E. Oldham, Clerk. By W. G. Landers, D. C.

31 **No. 1.**

JOHN F. CUBBINS et al.
vs.
MISSISSIPPI RIVER COMMISSION et al.

Decree.

This cause this day came on to be heard in vacation on the amended bill of John F. Cubbins in his own behalf and in behalf of the Riparian Land Owners' Protective Association, a voluntary association, complainants, and on the motion of the Yazoo-Mississippi Delta Levee Board to dismiss the original and amended bill of complainants, which motion was joined in by the Mississippi River Commission, and on service of process on the said Yazoo Missssippi Delta Levee Board, and

The Court having heard the argument of counsel for the complainants and for the two said named respondents and considered the

briefs of counsel submitted to the Court by counsel of the said named parties, and the Court having fully considered the pleadings in the cause and the arguments and briefs of counsel and been fully advised in the premises, doth find, that

The said Yazoo Mississippi Delta Levee Board and the said Mississippi River Commission are the only respondents named in said original and amended bill who have entered appearances in this cause and the said Yazoo Mississippi Delta Levee Board is the only respondent upon whom service of process in this cause has been had, and the Court doth further find that,

Said original and amended bill of complainants fails to
32 state a good cause for action either in equity or in law and that the motion to dismiss the bill made by the said named respondents should be sustained, at the cost of the complainants;

It is therefore ordered, adjudged and decreed that the original and amended bill of complainants filed in this cause be and the same are hereby dismissed at the cost of the complainants and that the respondents be not required to make any further answer to said original or amended bill in this Court.

Ordered, adjudged and decreed this the 14th day of May, 1914.

H. C. NILES,
Judge of the United States District Court
for the Northern District of Mississippi.

Endorsed: #1. Jno. F. Cubbins et al., vs. Miss. River Com. et al. Decree. Filed May 18, 1914. L. E. Oldham, Clerk. By W. G. Landers, D. C. Ent. M. B. 1, page 246.

33 In the District Court of the United States for the Western Division of the Northern District of Mississippi.

No. 1. In Equity.

JOHN F. CUBBINS et al.
vs.
MISSISSIPPI RIVER COMMISSION et al.

Now comes John F. Cubbins, Plaintiff and appellant, by Barnett E. Moses, his solicitor, and prays for a reversal of the decree of the District Court of the United States for the Western Division of the Northern District of Mississippi, in the above entitled cause, which decree was entered in said District Court on the 8th day of May, 1914, in Equity Minute Book 1, at page 246.

BARNETTE E. MOSES,
Attorney for Plaintiff.

Endorsed: No. 1. John F. Cubbins et al. vs. Yazoo-Miss. Delta Levee Board et al. Prayer for Reversal of Decree of District Court. Filed November 19, 1914. L. E. Oldham, Clerk.

34 In the District Court of the United States for the Western Division of the Northern District of Mississippi.

No. 1. In Equity.

JOHN F. CUBBINS et al.
vs.
MISSISSIPPI RIVER COMMISSION et al.

To the Honorable H. C. Niles, District Judge, etc.:

The above named plaintiff, feeling himself aggrieved by the decree made and entered in this cause on the 8th day of May, 1914, in Equity Minute Book 1, at page 246, does hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the assignment of errors, which is filed herewith, and he prays that his appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the Supreme Court of the United States, sitting at Washington, D. C.

And your petitioner further prays that the proper order touching the security to be required of him to perfect his appeal be made.

BARNETTE E. MOSES,
Attorney for Plaintiff.

The foregoing claim of appeal is allowed.

H. C. NILES,
District Judge.

Endorsed: No. 1. John F. Cubbins et al. vs. Mississippi River Commission & Yazoo-Miss. Delta Levee Board et al. Petition for Appeal. Filed November 19, 1914. L. E. Oldham, Clerk.

35 In the District Court of the United States for the Western Division of the Northern District of Mississippi.

No. 1. In Equity.

JOHN F. CUBBINS et al.
vs.
MISSISSIPPI RIVER COMMISSION et al.

This day came the plaintiff, John F. Cubbins, by his attorney, Barnette E. Moses, and files his petition in this cause praying for an appeal from the decree rendered and entered herein on the 8th day of May, 1914, in Equity Minute Book 1 at page 246 to the Supreme Court of the United States; and it appearing to the Court that the said Plaintiff has filed his assignments of error in said behalf, as is required by law and the rules of the Appellate Court:

It is therefore ordered, adjudged and decreed that the prayer of the said petition be, and the same is hereby granted and the appeal so prayed is hereby granted and allowed, upon the said plaintiff and appellant filing herein his appeal bond in the sum of $250.00, conditioned according to law;

And upon the filing of said appeal bond, it is further ordered by the Court that the Clerk of this Court perpare a full, true and perfect and correct copy of the record and proceedings had therein, and that a transcript of said record, proceedings and papers upon which said order and decree was made, duly authenticated, may be sent to the Supreme Court of the United States, under the Acts and Rules on force and obtaining before the passage of the Act of Congress entitled "An act to diminish the expenses of proceedings on appeal and writ of error or certiorari," passed and approved Febru-
36 ary 13th, 1911, the said plaintiff and appellant herein electing not to avail himself of the benefit of the said act.

H. C. NILES,
U. S. District Judge.

November 19, 1914.

Endorsed: No. 1. John F. Cubbins et al. vs. Mississippi River Commission & Yazoo-Miss. Delta Levee Board et al. Order Allowing Appeal. Filed November 19, 1914. L. E. Oldham, Clerk.

37 In the District Court of the United States for the Western Division of the Northern District of Mississippi.

No. 1. In Equity.

JOHN F. CUBBINS et al.
vs.
MISSISSIPPI RIVER COMMISSION et al.

Know all men by these presents, that we, John F. Cubbins, as principal and the United States Fidelity and Guaranty Company as surety, acknowledge ourselves to be jointly indebted to the Mississippi River Commission — the Yazoo Mississippi Delta Levee Board, Appellees in the above styled cause, in the sun of $250.00 *dollars*, conditioned, that whereas, on the 8th day of May, 1914 in the District Court of the United States for the Western Division of the Northern District of Mississippi, in a suit pending in that Court, wherein John F. Cubbins was the plaintiff, and the said Mississippi River Commission et al. were defendants, number- upon the Equity Docket as No. 1, a decree was entered against the said John F. Cubbins and the — John F. Cubbins having obtained an appeal and filed a copy thereof in the office of the Clerk of the Court to reverse the said decree, and a citation directed to defendants, citing and admonishing them to be and appear at a session of the Supreme Court of the United States, sitting at Washington, D. C. on the — day of October, A. D. 1915, next;

Now if the said John F. Cubbins shall prosecute his appeal to effect and answer all damages and costs, if he fails to make his plea good, then these obligations to be void, else to remain in full force and effect.

JOHN F. CUBBINS,
By B. E. MOSES, *His Att'y.*
38 UNITED STATES FIDELITY & GUARANTY CO., BALTIMORE, MD.

Approved this 19 day of November, 1914.
H. C. NILES,
District Judge.

Endorsed: No. 1. John F. Cubbins et al. vs. Mississippi River Commission & Yazoo-Miss. Delta Levee Board et al. Bond. Filed November 19, 1914. L. E. Oldham, Clerk.

39 In the District Court of the United States for the Western Division of the Northern District of Mississippi.

No. 1. In Equity.

JOHN F. CUBBINS et al.
vs.
MISSISSIPPI RIVER COMMISSION et al.

Assignment of Errors.

And now on this the 29th day of October, A. D., 1914, comes the plaintiff John F. Cubbins, by his attorney Barnette E. Moses, and says that the decree entered in the above styled cause on the 8th day of October, 1913, is erroneous and unjust to the said plaintiff, for the following reasons:

First. Because plaintiff's bill allegs that his land on the east bank of the Mississippi River, in its natural condition and before the construction of the levee system by the defendant, Mississippi River Commission, in aid of navigation, and by the defendant Yazoo-Mississippi Delta Levee Board, for the reclamation or "protection" of the lands within its borders from overflows in times of high water, was from three to ten feet above the highest natural flood heights of the said river; that the defendants have constructed and are constructing, maintaining, enlarging, repairing and increasing the height of the said levees; and that the effect of the closing by the said defendants of the natural outlets along the said river and the confining of the flood waters between the levee system as a whole, in a narrower high water channel, is to obstruct the natural high water flow of the waters of the said river in and along its natural bed, thereby raising the level of the water to such an extent that said flood waters within the last one year have for the first time
40 attained a height sufficient to flow over complainant's land, which they otherwise would not do, and when there is now

a high water stage in said river, the waters of the river accumulate, flow over and remain standing upon and over said lands of complainant to a depth of from four to eight feet, as a direct and proximate result of the construction, enlargement and repairing of said levees by said defendants, so that complainant is now being interreputed in the profitable use, occupation and enjoyment of his said land; and that said waters are being held back by the said levees, so constructed, enlarged, maintained and repaired by said defendants, at a higher elevation than it naturally assumed, and complainant's said land is being covered with superinduced additions of sand, silt and gravel, now from six inches to three feet in depth; the houses and fences thereon are being washed away, rendering the said land and the said houses thereon unfit for occupancy, driving away the tenants, doing irreparable harm and injury to said lands, impairing its usefulness, causing the practical destruction thereof, and destroying its market value; and shows a taking of plaintiff's property within the meaning of the Constitutional provisions requiring compensation; and this without providing compensation therefor.

Secondly. Because plaintiff's Bill, as amended alleges that his land, which in its natural condition was above the highe*st* flood heights of the Mississippi River, has been overflowed for the first time within the last one year; has been covered with superinduced additions of sand, silt and gravel, now from six inches to three feet in depth; the houses and fences thereon have been washed away; the use-
41 fulness of the land impaired; its market value destroyed; and the land practically destroyed; as the direct and proximate result of the levees constructed, maintained, enlarged and repa*r*ired by the defendant Yazoo-Mississippi Delta Levee Board, for the reclamation of the lands within its district, and the obstruction and increased elevation of the high water flow of the waters of said river by the said levees, without compensation to plaintiff therefor, and plaintiff pray*ed* for a transfer of this cause to the law side of the Court and its trial there as an action at Law against said defendant Yazoo-Mississippi Delta Levee Board, in the event of the denial of the injunction prayed for.

Third. Because plaintiff is entitled to relief under his prayer for general relief.

BARNETTE E. MOSES,
Attorney for Plaintiff.

Endorsed: No. 1. John F. Cubbins et al. vs. Miss. River Commission & Yazoo-Miss. Delta Levee Board et al. Assignment of Errors. Filed November 19, 1914. L. E. Oldham, Clerk.

42 In the District Court of the United States for the Delta Division of the Northern Judicial District of Mississippi.

The President of the United States of America to the Mississippi River Commission and the Yazoo Mississippi Delta Levee Board, Greeting:

You are hereby cited and admonished to be and appear before the United States Supreme Court, sitting at Washington, D. C., on the 19th day of December, 1914, pursuant to an appeal allowed by, and as the same appears of record in the Clerk's office of, the District Court of the United States for the Delta Division of the Northern District of Mississippi, in the sause wherein John F. Cubbins et al. are Complainants and the Mississippi River Commission and the Yazoo Mississippi Delta Levee Board are Defendants, to show cause, if any there be, why the decree rendered against the said John F. Cubbins et al., in said cause mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry C. Niles, Judge of the District Court of the United States for the Northern District of Mississippi, this the 19th day of November, 1914, in the year of our Lord, one thousand nine hundred and fourteen.

[Seal United States District Court, Northern District Miss.]

H. C. NILES, *Judge.*

I hereby acknowledge service of above notice this Nov. 20th, 1914.

W. S. HILL, *U. S. Att'y.*

[Endorsed:] No. 1. John F. Cubbins et al. vs. Mississippi River Commission & Yazoo Miss. Delta Levee Board et al. Citation. Filed November 20, 1914. L. E. Oldham, Clerk.

43 In the District Court of the United States for the Delta Division of the Northern Judicial District of Mississippi.

The President of the United States of America to the Mississippi River Commission and the Yazoo Mississippi Delta Levee Board, Greeting:

You are hereby cited and admonished to be and appear before United States Supreme Court, sitting at Washington, D. C., on the 19th day of December, 1914, pursuant to an appeal allowed by, and as the same appears of record in the Clark's office of, the District Court of the United States for the Delta Division of the Northern District of Mississippi, in the cause wherein John F. Cubbins et al. are Complainants and the Mississippi River Commission and the Yazoo Mississippi Delta Levee Board *is* Defendants, to show cause, if any there be, why the decree rendered against the said John F. Cubbins et al., in said cause mentioned, should not be corrected and why speedy justice should not be done to the *party* in that behalf.

Witness the Honorable Henry C. Niles, Judge of the District Court of the United States for the Northern District of Mississippi, this the 19th day of November, 1914, in the year of our Lord, one thousand nine hundred and fourteen.

[Seal United States District Court, Northern District Miss.]

H. C. NILES, *Judge.*

We, as attorneys of record for the Yazoo Mississippi Delta Levee Board, do hereby acknowledge service of the above citation for and in behalf of said client. This the 20th day of November, 1914.

GARY & RICE.

[Endorsed:] No. 1. John F. Cubbins et al. vs. Mississippi River Commission & Yazoo Miss. Delta Levee Board et al. Citation. Filed November 20, 1914. L. E. Oldham, Clerk.

44 UNITED STATES OF AMERICA,
Northern District of Mississippi:

I, L. E. Oldham, Clerk of the District Court of the United States for the Northern District of Mississippi, do hereby certify and return to the claim of appeal of John F. Cubbins, et al., in the cause pending in said Court, wherein the said John F. Cubbins, et al., are Plaintiffs and Mississippi River Commission and Yazoo-Mississippi Delta Levee Board are Defendants, that the above and foregoing is a true copy of all papers filed and proceedings had and entered in said cause as the same appear on file and of record in my office; that I have compared the same with the originals, and they are true and correct transcripts therefrom and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said Court, at Oxford, in said District, this 25th day of November, in the year of our Lord one thousand nine hundred and fourteen, and of the independence of the United States, the one hundred and thirty-nine.

[Seal United States District Court, Northern District Miss.]

L. E. OLDHAM,
Clerk of the District Court of the United States for the Northern District of Mississippi.

Endorsed on cover: File No. 24,467. N. Mississippi D. C. U. S. Term No. 299. John F. Cubbins, appellant, vs. The Mississippi River Commission and The Yazoo Mississippi Delta Levee Board. Filed December 16th, 1914. File No. 24,467.